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CHARLES ELMORE PROFFER

IN THE

Supreme Court of the United States

OCTOBER TERM 1944

No. 680

CORN PRODUCTS REFINING COMPANY, a corporation,
and CORN PRODUCTS SALES COMPANY, a
corporation,

Petitioners,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

GEORGE DEFOREST LORD,
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Inasmuch as the memorandum for the Federal Trade Commission does not oppose the petition for a writ of certiorari in so far as the basing point price practices and the "booking" practices under Section 2(a) of the Clayton Act are concerned, no further argument is necessary at this time by petitioners on those points. In so far as the desirability of review by this Court on the other practices alleged to be in violation of Section 2(a) which the respondent opposes, petitioners are content to rest upon their main brief in support of the petition.

This reply is limited to the Government's contention that this Court should exclude from review consideration of the questions presented under Section 2(e) of the

Clayton Act, *i. e.*, the cooperative advertising arrangements between petitioners and the Curtiss Candy Company.

Reply to Point III in Respondent's Memorandum

Petitioners have contended that these issues involve a question of statutory interpretation which is of general concern to many business enterprises and should therefore be reviewed by this Court. Respondent contends in effect that the decision below is right and, in the absence of a conflicting ruling, does not warrant review.

The court below decided that dextrose, when sold to a candy manufacturer and combined with milk, eggs, chocolate and nuts, fell within the provisions of the act covering "goods bought for resale with or without processing." The Federal Trade Commission's memorandum (pp. 11 and 12) in substance concedes that this question is one of widest importance. It states (p. 11) that the acts prohibited in Section 2(e) apply to "all goods bought for resale whether in their original form or after processing operations." The field covered by the language quoted is in itself large enough even without the absurdly enlarged interpretation given to the words "bought for resale" and "processing" by the court below and the Federal Trade Commission. But the construction of the quoted words by the court below so broadens the scope of Section 2(e) that it would include almost the entire manufacturing business of the country. Under this construction, steel would be "bought for resale" if used for the manufacture of automobiles. Automobiles would become "processed" steel. Certainly then, the question is broad enough in its dimensions to warrant review by this Court. It involves an important question of Federal law which has not been and should be decided by this Court and in which a countrywide rule is especially desirable.

Respondent, while conceding that under its interpretation the statute covers a very wide field, dismisses our

argument that it should be reviewed, with a statement that the decision below on this point "is not sufficiently doubtful to warrant review." The construction of the words "bought for resale" and "processing" by the court below is very clearly a departure from the usual construction of these words. The statute does not define the meaning of these words and there is little available authority. The decision below ascribes to the meaning of the word "processing" a wholly different interpretation from that given it under the Fair Labor Standards Act by the Eighth Circuit Court of Appeals in *Fleming v. Hawkeye Pearl Button Company* (1940), 113 F. (2d) 52. There the court held that cutting blanks from fresh water clam shells to make buttons was not processing under the act in question.

In view of the importance of the question involved, the lack of substantial available authority and the apparent divergence in such authority as does exist, this phase of the case should also be reviewed.

Conclusion

It is respectfully submitted that a writ of certiorari should be granted in this cause and that the granting of such writ of certiorari should not be limited in its scope.

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